

**MINUTES**

**NATIVE AMERICAN GRAVES PROTECTION AND  
REPATRIATION REVIEW COMMITTEE**

**THIRTY-NINTH MEETING**

**MAY 23-24, 2009**

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## Background

The Native American Graves Protection and Repatriation Review Committee was established under the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3001 et seq., which was signed into law by President George Bush on November 16, 1990.

Pursuant to 25 U.S.C. 3006 (c) and (h), the Review Committee is responsible for –

1. Designating one of the members of the committee as chairman;
2. Monitoring the inventory and identification process conducted under sections 5 and 6 to ensure a fair, objective consideration and assessment of all available relevant information and evidence;
3. Upon the request of any affected party, reviewing and making findings related to-
  - A. The identity or cultural affiliation of cultural items, or
  - B. The return of such items;
4. Facilitating the resolution of any disputes among Indian tribes, Native Hawaiian organizations, or lineal descendants and Federal agencies or museums relating to the return of such items including convening the parties to the dispute if deemed desirable;
5. Compiling an inventory of culturally unidentifiable human remains that are in the possession or control of each Federal agency and museum and recommending specific actions for developing a process for disposition of such remains;
6. Consulting with Indian tribes and Native Hawaiian organizations and museums on matters within the scope of the work of the committee affecting such tribes or organizations;
7. Consulting with the Secretary in the development of regulations to carry out this Act;
8. Performing such other related functions as the Secretary may assign to the committee;
9. Making recommendations, if appropriate, regarding future care of cultural items which are to be repatriated; and
10. Submitting an annual report to the Congress on the progress made, and any barriers encountered, in implementing this section during the previous year.

The Review Committee is organized and administered according to the Federal Advisory Committee Act (FACA), 5 U.S.C. Appendix (1994).

Six Review Committee members are appointed by the Secretary of the Interior from nominations by Indian tribes, Native Hawaiian organizations, traditional Native American religious leaders, national museum organizations, and scientific organizations. One Review Committee member is appointed by the Secretary from a list of persons developed and unanimously approved by the other members.

The Review Committee reports to the Secretary of the Interior. Under the Review Committee's charter, the Manager, National NAGPRA Program, National Park Service (NPS) or a designee serves as the Designated Federal Officer (DFO) to the Review Committee. The DFO oversees the activities of the Review Committee and coordinates NPS administrative and staff support to the Review Committee on behalf of the Secretary of the Interior.

Additional information about the Review Committee – including the Review Committee's charter, membership, meeting protocol, and dispute procedures – is available at the National NAGPRA Website, <http://www.nps.gov/history/nagpra> (click on "Review Committee").

Notice of this Review Committee meeting was published in the Federal Register on December 31, 2008 (Vol. 73, No. 251, page 80,423-80,424).

## **The 39th Meeting of the Review Committee**

The 39th meeting of the Native American Graves Protection and Repatriation Review Committee was called to order by Mr. Dan Monroe, Chair pro tem, at 8:40 a.m., Saturday, May 23, 2009. Mr. Hemenway offered an invocation to start the meeting each day.

Review Committee members present –

Mr. Dan Monroe – Chair

Ms. Sonya Atalay

Mr. Alan Goodman

Mr. Eric Hemenway

Mr. Colin Kippen

Review Committee member absent –

Ms. Donna Augustine

Designated Federal Officer present –

Mr. David Tarler, Training and Civil Enforcement Coordinator, National NAGPRA Program

National Park Service/Department of the Interior staff in attendance –

Ms. Sherry Hutt, Program Manager, National NAGPRA Program, National Park Service

Ms. Robin Coates, Secretary, National NAGPRA Program, National Park Service

Mr. Bob Palmer, Civil Penalties Investigator, Division of Law Enforcement Security and Emergency Services,  
National Park Service

Ms. Lesa Koscielski, Contractor, National NAGPRA Program, National Park Service

Ms. Carla Mattix, Division of Parks and Wildlife, Office of the Solicitor, Department of the Interior

Mr. Stephen Simpson, Division of Indian Affairs, Office of the Solicitor, Department of the Interior

Persons in attendance during part or all of the meeting (names and affiliations as provided by attendees) –

Ms. Risa Arbolino, Smithsonian National Museum of Natural History, Washington, DC

Ms. Lorna Babby, US Army Corps of Engineers, Portland, OR

Ms. Joanne Barker, San Francisco State University, San Francisco, CA

Mr. Tim Begay, Navaho Nation Historic Preservation Department, Window Rock, AZ

Ms. Danielle Benden, University of Wisconsin at Madison, Madison, WI

Ms. Jan Bernstein, Bernstein & Associates, Denver, CO

Ms. Kathy Billings, National Park Service, Pecos National Park, Pecos, NM

Mr. Ernest Boszhardt, Mississippi Valley Archaeological Center, University of Wisconsin, La Crosse, WI

Mr. Joe Brennan, Field Museum, Chicago, IL

Ms. Barbara Brotherton, Seattle Art Museum, Seattle, WA

Ms. Susan Bruning, Society for American Archaeology, Southlake, TX

Mr. Fred Bunch, National Park Service, Great Sand Dunes National Park and Preserve, Mosca, CO

Ms. June Carpenter, Osage Nation, Pawhuska, OK

Ms. Mary Carroll, National Park Service, Denver, CO

Ms. Rosemary Caye, Confederated Salish & Kootenai Tribes of the Flathead Indian Reservation, Pablo, MT

Mr. Chip Colwell-Chanthaphonh, Denver Museum of Nature & Science, Denver, CO

Ms. Deborah Confer, Bernstein & Associates, Denver, CO

Ms. Jacqueline Cook, Confederated Tribes of the Colville Reservation, Nespelem, WA

Mr. Jon Daehnke, Stanford University, Santa Cruz, CA

Ms. Eileen Devinney, National Park Service, Western Arctic National Parklands, Anchorage, AK

Mr. Clayton Dumont, San Francisco State University, San Francisco, CA

Ms. Carrie Feldman, National Museum of the American Indian, Suitland, MD

Mr. Anthony Garcia, University of California Berkeley, Phoebe Hearst Museum, Berkeley, CA

Ms. Sheila Goff, Colorado Historical Society, Denver, CO

Ms. Priscilla Grew, University of Nebraska at Lincoln, Lincoln, NE

Ms. Coralee Hays, National Park Service, Hovenweep National Park, Lake Powell, UT

Mr. Philip Hoog, San Diego Museum of Man, San Diego, CA

Mr. Art Hutchinson, National Park Service, Great Sand Dunes National Park and Preserve, Mosca, CA  
 Mr. Harold Jacobs, Tlingit & Haida Indian Tribes of Alaska, Juneau, AK  
 Mr. Jordan Jacobs, American Museum of Natural History, New York, NY  
 Mr. Joseph Joaquin, Tohono O'odham Nation, Sells, AZ  
 Mr. John Johnson, Chugach, Smithsonian Review Committee, Anchorage, AK  
 Mr. William Johnson, Saginaw Chippewa Indian Tribe of Michigan, Ziibiwing Center, Mt. Pleasant, MI  
 Ms. Stephanie Jolivet, Burke Museum, Seattle, WA  
 Mr. Marvin Keller, Bureau of Indian Affairs, Billings, MT  
 Ms. Mary Anne Kenworthy, Department of Interior, Solicitor's Office, Pacific Northwest Region, Portland, OR  
 Ms. D. Bambi Kraus, National Association of Tribal Historic Preservation Officers, Washington, DC  
 Mr. Arden Kucate, Pueblo of Zuni, Zuni, NM  
 Ms. Christine Landrum, National Park Service, Intermountain Region, Denver, CO  
 Ms. Amy Lonetree, University of California at Santa Cruz, Santa Cruz, CA  
 Mr. Stanley Loretto, Pueblo of Jemez, Jemez Pueblo, NM  
 Ms. Cyd Martin, National Park Service, Denver, CO  
 Mr. Kelly Meyers, Burke Museum, Seattle, WA  
 Ms. Jess Milhausen, Burke Museum, Seattle, WA  
 Mr. Terry Morgart, Hopi Tribe, Kykotsmovi, AZ  
 Ms. Nell Murphy, American Museum of Natural History, New York, NY  
 Ms. Jennifer Murray, National Museum of Natural History, Washington, DC  
 Mr. Aaron Naumann, University of Washington, Seattle, WA  
 Mr. Angela Neller, Wanapum Heritage Center, Ellensburg, WA  
 Ms. Nancy Nelson, Oregon Parks and Recreation Department, Salem, OR  
 Ms. Megan Noble, Burke Museum, Seattle, WA  
 Ms. Jill Norwood, National Museum of the American Indian, Suitland, MD  
 Ms. Lucille Park, San Diego, CA  
 Ms. Theresa Pasqual, Pueblo of Acoma, Acoma, NM  
 Ms. Laura Phillips, Burke Museum, Seattle, WA  
 Mr. Bill Pretzer, Central Michigan University, Mt. Pleasant, MI  
 Mr. Richie Richards, Hearst Museum, Albany, CA  
 Ms. Jennifer Richman, US Army Corps of Engineers, Northwest Division, Portland, OR  
 Ms. Helen Robbins, Field Museum, Chicago, IL  
 Mr. David Ruppert, National Park Service, Washington, DC  
 Ms. Carol Saloway, Confederated Salish & Kootenai Tribes of the Flathead Indian Reservation, Pablo, MT  
 Ms. Susan Savage, University of Denver, Museum of Anthropology, Denver, CO  
 Ms. Margo Schwadron, National Park Service, Southeast Archaeological Center, Tallahassee, FL  
 Ms. Dena Sedar, Seattle, WA  
 Ms. Brooke Shelman, Seattle, WA  
 Mr. Chuck Smythe, National Park Service, Northeast Region, Boston, MA  
 Ms. Jeanette Soares, Government Accountability Office, Washington, DC  
 Ms. Anna Strankman, Portland Art Museum, Portland, OR  
 Mr. Nick Tipon, Southern Pomo, Santa Rosa, CA  
 Mr. Christopher Toya, Pueblo of Jemez, Jemez Pueblo, NM  
 Mr. Jose La Cruz Toya, Pueblo of Jemez, Jemez Pueblo, NM  
 Ms. Winnay Wemigwase, MACPRA – Michigan, Harbor Springs, MI  
 Ms. Robin Wilson, American Indian FAC, San Diego, CA  
 Mr. Frank Wozniak, USDA Forest Service, Albuquerque, NM  
 Mr. Fred York, National Park Service, Pacific West Region, Seattle, WA  
 Ms. Heather Young, Pecos National Historical Park, Pecos, NM

## **Introduction/Welcome**

Mr. Tarler took roll call. Ms. Hutt stated that Ms. Augustine was absent due to personal and family health reasons. Mr. Tarler stated that the Review Committee currently had six members, as the term for Ms. Rosita Worl, prior Chair of the Review Committee, expired on March 2, 2009. Nominations for this slot closed on February 27, 2009. The

appointment package left the National NAGPRA Program on March 3, 2009, and Mr. Tarler expected the Secretarial appointment soon.

Mr. Tarler stated that on May 20, 2008, the terms of three members – Mr. Dan Monroe, Mr. Vincas Steponaitis, and Mr. Willie Jones – expired. Mr. Monroe and Mr. Steponaitis had been appointed from nominations submitted by national scientific and museum organizations. Mr. Jones, a traditional religious leader, had been appointed from nominations submitted by Indian tribes and Native Hawaiian organizations.

Eight individuals were nominated by national scientific and museum organizations for two positions on the Review Committee. From those nominees, the Secretary appointed Ms. Sonya Atalay to a four-year term and reappointed Mr. Dan Monroe to a two-year term. Ms. Atalay is an Assistant Professor of Anthropology at Indiana University – Bloomington and a former chair of the Society for American Archaeology’s Committee on Native American Relations. Mr. Monroe is the Executive Director and Chief Executive Officer of the Peabody Essex Museum, in Salem, MA, Chair of the Association of Art Museum Directors’ Art Issues Committee, Chair of AAMD’s Subcommittee on the Acquisition of Archaeological Materials and Ancient Art, and a former president of the American Association of Museums.

Five individuals were nominated by Indian tribes and Native Hawaiian organizations for one position to be filled by a traditional religious leader. From those nominees, the Secretary appointed Mr. Eric Hemenway to a four-year term. Mr. Hemenway performs traditional ceremonies and works on NAGPRA compliance as the Research/Repatriation Assistant for his tribe, the Little Traverse Bay Bands of Odawa Indians. Mr. Tarler welcomed Ms. Atalay and Mr. Hemenway to the Review Committee and congratulated Mr. Monroe on his reappointment.

Mr. Monroe stated that, on behalf of the Review Committee, he would like to recognize and thank Ms. Rosita Worl for the extraordinary leadership and service she provided as Chair of the Review Committee over the past several years.

### **Selection of Review Committee Chair**

In November 2008, the Department of the Interior renewed the Review Committee’s charter. In doing so, they removed the provision that permitted a member whose term expired to continue serving on the Review Committee pending either reappointment of the member or appointment of a successor. Chair Rosita Worl’s term expired in March 2009. Before her term ended, Ms. Worl selected Mr. Monroe to serve as Chair pro tem until the Seattle, WA meeting, when a new Chair would be selected.

Mr. Monroe opened the discussion and called for nominations. Ms. Atalay nominated Mr. Kippen. With no other nominations, Mr. Monroe called for a vote. The vote was unanimous to appoint Mr. Kippen as Review Committee Chair.

### **Selection of the Subcommittee to Write the 2008 Report to the Congress**

After discussion, Ms. Atalay and Mr. Goodman agreed to work on the subcommittee to draft the Review Committee’s 2008 Report to Congress, with the assistance of Mr. Kippen. The draft 2008 Report to the Congress will be considered for approval at the fall 2009 meeting.

### **Request for a Recommendation Regarding an Agreement for the Disposition of Culturally Unidentifiable Native American Human Remains in the Possession of Great Sand Dunes National Park and Preserve, CO**

#### **Presentation**

Mr. Art Hutchinson, Superintendent of Great Sand Dunes National Park and Preserve, stated that Great Sand Dunes was requesting a recommendation regarding the disposition to the Ute Mountain Ute Tribe of the Ute Mountain

Reservation in Colorado, New Mexico, and Utah of culturally unidentifiable Native American human remains representing a minimum of three individuals that are under the control of Great Sand Dunes. The request was made after extensive consultation with all potentially affiliated Indian tribes. The human remains consist of three individuals removed by a resident of San Luis Valley in the 1960s from a site likely in or near the boundaries of Great Sand Dunes National Park. Mr. Hutchinson stated if the Review Committee recommended proceeding with the request, the disposition was expected to occur in 2009 or early 2010.

Mr. Arden Kucate read a statement by Mr. Terry Knight, a member of the Ute Mountain Ute Tribe, who was absent due to ceremonial commitments. Mr. Knight stated that through consultation the affected Indian tribes and pueblos had requested disposition of the three individuals to the Ute Mountain Ute Tribe, that all consulting Indian tribes and pueblos would assist the disposition ceremonially according to their cultural practices, and that the Ute Mountain Ute Tribe was committed to the repatriation and reinterment of these culturally unidentifiable human remains. Mr. Arden Kucate, a member of Zuni Pueblo, in New Mexico, stated that the Indian tribes came to consensus on this issue through consultation. Mr. Kucate asked for the Review Committee's careful review and favorable consideration of the proposed disposition.

#### **Review Committee Questions and Discussion**

Mr. Goodman stated that there was no biological information included in the materials and asked for clarification. Ms. Christine Landrum, Intermountain Region, NPS, stated that the analysis was inconclusive due to the fragmentary nature of the human remains and, therefore, the analysis was not included; however, the report was available for review at the meeting. Ms. Landrum stated that the forensic anthropologists determined that, based on evidence of dental wear, the human remains were Native American and likely prehistoric, although age determinations could not be definitive.

#### **Review Committee Motion**

Mr. Monroe made a motion to approve the request of the Great Sand Dunes National Park and Preserve regarding the disposition of three sets of culturally unidentifiable Native American human remains to the Ute Mountain Ute Tribe. Mr. Goodman seconded the motion. Mr. Monroe called the question. The motion was adopted unanimously.

### **Request for a Recommendation Regarding an Agreement for the Disposition of Culturally Unidentifiable Native American Human Remains in the Possession of Pecos National Historical Park, NM**

#### **Presentation**

Ms. Kathy Billings, Superintendent of Pecos National Historical Park, stated that Pecos National Historical Park was requesting a recommendation regarding the disposition to the Pueblo of Jemez of culturally unidentifiable Native American human remains representing a minimum of 153 individuals that are under the control of Pecos National Historical Park. The Pueblo of Jemez merged with the Pueblo of Pecos into one Indian tribe under an Act of Congress of June 16, 1936. The proposed disposition was at the request of all potentially affiliated Indian tribes, following extensive consultation.

Mr. Christopher Toya, Traditional Cultural Properties Project Manager, Pueblo of Jemez, stated that he was a direct descendent of the Pueblo of Pecos people and that he would like to have his ancestors reburied at the Pueblo of Pecos. Mr. Jose La Cruz Toya, a member of the Pecos Eagle Watcher Society, and Mr. Stanley Loretto, Lieutenant Governor of the Pueblo of Jemez, each stated they would like their ancestors to return home.

#### **Review Committee Questions and Discussion**

Mr. Goodman stated there were no associated funerary objects listed, and asked for clarification. Ms. Heather Young, museum curator at Pecos National Historical Park, stated that most of the human remains were fragmentary, that they had been recovered as a result of having eroded from the soil in which they had been interred, and that no associated funerary objects had been collected. Mr. Hemenway asked about the likelihood that some of the human remains were non-Native. Mr. Christopher Toya stated that the Pueblo of Jemez was aware that some of the human remains might possibly be non-Native due to the diversity of people inhabiting the area; however, as in past repatriations, the Pueblo of Jemez wished for all the human remains that were taken from the Pueblo of Pecos to be



returned and reburied there. Mr. Goodman asked about the possibility of Spanish populations in the area at the time. Mr. Christopher Toya stated it was a possibility, based on Spanish occupation of the area; however, the evidence pointed to the human remains being Pecos people. Ms. Young stated that, more likely than not, the human remains in question were Native American, as the Spanish settlements in the area only began in the late 1700s.

#### **Review Committee Motion**

Mr. Monroe made a motion to approve the request of Pecos National Historical Park, NM, regarding the disposition of 153 sets of culturally unidentifiable human remains to the Pueblo of Jemez. Mr. Goodman seconded the motion. Mr. Monroe called the question. The motion was adopted unanimously.

### **Request for a Recommendation Regarding an Agreement for the Disposition of Culturally Unidentifiable Native American Human Remains in the Possession of Hovenweep National Monument, UT**

#### **Presentation**

Ms. Coralee Hays, Superintendent of Hovenweep National Monument and Natural Bridges National Monument, stated that Hovenweep National Monument was requesting a recommendation regarding the disposition to the Hopi Tribe, the Pueblo of Acoma, the Pueblo of Zia, and the Zuni Tribe of the Zuni Reservation of culturally unidentifiable Native American human remains representing a minimum of six individuals, along with their associated funerary objects, that are under the control of Hovenweep. The disposition request was made by the National Park Service after extensive consultation and with the unanimous agreement of all potentially affiliated Indian tribes.

Mr. Timothy Begay, Cultural Specialist and Traditional Cultural Program Director, Navajo Nation, stated that the Indian tribes were united in their effort to fulfill natural laws by returning these ancestors to the ground. Ms. Theresa Pasqual, Director for the Pueblo of Acoma Historic Preservation Office, stated that the process leading to this request had been a long one, and that the Pueblo of Acoma, and especially the Pueblo Elders, wanted to convey the urgent need for a favorable disposition. Mr. Terry Morgart, legal researcher for the Hopi Tribe, stated that the tribes appreciated the National Park Service's allowing reburial in parks and the Forest Service's reburial in forests, and wished that the Review Committee would look into the continued prohibition of reburial on lands managed by the Bureau of Land Management. The Indian tribes were unanimous in their agreement that the human remains were culturally unidentifiable and should be reburied. Mr. Arden Kucate, Pueblo of Zuni, stated that, on behalf of one of the most active Indian tribes in the Southwest regarding repatriation, he wished to express the support and appreciation of the Pueblo of Zuni for the united manner in which the Indian tribes are working together on repatriations and dispositions.

#### **Review Committee Questions and Discussion**

Mr. Hemenway stated the human remains and funerary objects were frequently moved from one institution to another, and asked for clarification on the status of the human remains. Ms. Christine Landrum, Intermountain Region, NPS, stated that all of the materials were accessioned and catalogued into NPS collections, and were moved to the Anasazi Heritage Center at the request of the Indian tribes in order to facilitate the consultation and repatriation process.

#### **Review Committee Motion**

Mr. Monroe made a motion to approve the request of Hovenweep National Monument, UT, regarding the disposition of six sets of culturally unidentifiable Native American human remains and their associated funerary objects to the Hopi Tribe, the Pueblo of Acoma, the Pueblo of Zia, and the Zuni Tribe of the Zuni Reservation. Mr. Hemenway seconded the motion. Mr. Monroe called the question. The motion was adopted unanimously.

## **Request for a Recommendation Regarding an Agreement for the Disposition of Culturally Unidentifiable Native American Human Remains in the Possession of the University of Nebraska State Museum, NE**

### **Presentation**

Ms. Pricilla Grew, Director and NAGPRA Coordinator for the University of Nebraska State Museum, stated that the University of Nebraska State Museum was requesting a recommendation regarding the disposition to the Little Traverse Bay Bands of Odawa Indians, the Bay Mills Indian Community, the Keweenaw Bay Indian Community, the Lac Vieux Desert Band of Lake Superior Chippewa Indians, the Grand Traverse Band of Ottawa and Chippewa Indians, and the Saginaw Chippewa Indian Tribe of culturally unidentifiable Native American human remains representing a minimum of two juvenile individuals under the control of the Museum. The disposition agreement is supported by the Sac and Fox Nation of Oklahoma and the Pokagon Band of Potawatomi Indians, in Michigan. The human remains were collected in Michigan in 1884, and came into the possession of the University of Nebraska State Museum in 1894. The human remains were examined by a forensic anthropologist consultant, and were included in the University of Nebraska State Museum's NAGPRA inventory in 1998. Ms. Grew stated that the University of Nebraska State Museum also had funerary objects from Michigan that had been donated to the museum by the collector of the human remains in question. Although the specialists were not able to determine that the funerary objects were affiliated with these human remains, the museum intended to publish a Notice of Intent to Repatriate the (unassociated) funerary objects to these same tribes pending approval of this disposition agreement.

Ms. Winnay Wemigwase, Vice President of the Michigan Anishnaabek Cultural Preservation and Repatriation Alliance (MACPRA), stated that she represented the coalition of Indian tribes from Michigan. She further stated that, through oral tradition and cultural beliefs, the tribes feel they are all related and that it is their responsibility to care for their ancestors by ensuring the entire completion of their lives on earth. The Indian tribes involved in this disposition request are in complete agreement. Mr. William Johnson, Curator for the Ziibiwing Center and NAGPRA Coordinator for the Saginaw Chippewa Indian Tribe of Michigan, stated that his tribe supported this proposed disposition.

### **Review Committee Questions and Discussion**

Ms. Atalay asked for clarification of the support from the Sac and Fox Nation of Oklahoma, which was not an Anishnaabe tribe. Ms. Wemigwase stated that the Indian tribes of Michigan, through MACPRA, try to be respectful of all individuals that could possibly be affected by the repatriations and dispositions. Although the Sac and Fox Nation does not currently reside in the area, it does have a historical presence in Michigan. Mr. Hemenway stated that, as he personally worked on this matter with the Indian tribes and the museum, he would recuse himself from the vote.

### **Review Committee Motion**

Mr. Monroe made a motion to approve the request of the University of Nebraska State Museum regarding the disposition of two sets of culturally unidentifiable Native American human remains to the coalition of Michigan tribes. Mr. Goodman seconded the motion. Mr. Kippen called the question. The motion was adopted unanimously, with one recusal (Mr. Hemenway).

## **Request for a Recommendation Regarding an Agreement for the Disposition of Culturally Unidentifiable Native American Human Remains in the Possession of Central Michigan University, Museum of Cultural and Natural History, MI**

### **Presentation**

Mr. William Pretzer, Director of the Museum of Cultural and Natural History at Central Michigan University, stated that the Museum of Cultural and Natural History was requesting a recommendation regarding the disposition to the Saginaw Chippewa Indian Tribe, in Michigan, of culturally unidentifiable Native American human remains representing a minimum number of 144 individuals, along with 374 associated funerary objects, all collected from three sites in central Michigan and under the control of the Museum. The request was based on archaeological documentation, the traditional history of Indian tribes in Michigan presented by the Michigan tribal alliance, physical identification by two anthropologists, and letters of support from Indian tribes in Michigan.

Mr. William Johnson, Saginaw Chippewa Indian Tribe and Curator of Ziibiwing Cultural Center, stated that his spirit name was Little Black Diamond, he was from the Bear Clan, and he was Ojibwe Anishnaabe. Mr. Johnson stated that the process leading to this disposition agreement request began in 1993, when the Saginaw Chippewa Indian Tribe was notified that the human remains and associated funerary objects in question were in the possession of the Museum of Cultural and Natural History. The request for disposition was based on the following: physical anthropologists identified the human remains as Native American based on cranial, facial and dental features; the associated funerary objects were consistent with those manufactured by the Anishnaabek, and their archaeological context makes clear that they were included in Native American burials; the Saginaw Valley (where the three burial sites were located) is considered by the Anishnaabek to be their aboriginal land; and evidence of Anishnaabek occupation from the Paleo-Indian through Historic Periods has been well-documented. For this disposition agreement request, the Saginaw Chippewa Indian Tribe of Michigan had the support of the Bay Mills Indian Community, the Grand Traverse Band of Ottawa and Chippewa Indians, the Hannahville Potawatomi Indian Community, the Keweenaw Bay Indian Community, the Lac Vieux Desert Band of Lake Superior Chippewa Indians, the Little River Band of Ottawa, the Little Traverse Bay Band of Odawa, the Match-e-be-nash-she-wish Band of Gun Lake Potawatomi, the Pokagon Band of Potawatomi, and the Sault Ste. Marie Tribe of Chippewa Indians, as well as the cooperation of the Sac and Fox Tribe of Oklahoma and the Wyandotte Nation.

#### **Review Committee Questions and Discussion**

Ms. Atalay and Mr. Hemenway recused themselves, as they both had worked with the parties to this disposition agreement request.

#### **Review Committee Motion**

Mr. Monroe made a motion to approve the request of the Museum of Cultural and Natural History at Central Michigan University regarding the disposition of culturally unidentifiable Native American human remains representing 144 individuals, and 374 associated funerary objects to the Saginaw Chippewa Indian Tribe of Michigan. Mr. Goodman seconded the motion. Mr. Kippen called the question. The motion was adopted unanimously, with two recusals (Ms. Atalay and Mr. Hemenway).

### **Discussion of Process to Submit Requests for Recommendation Regarding Disposition of Culturally Unidentifiable Native American Human Remains**

In 2008, in response to the Review Committee's request for a document to help manage the flow of information from Indian tribes, museum and scientific organizations, and Federal agencies when they make disposition agreement requests to the Review Committee, the National NAGPRA Program created a form entitled "Request by a Museum or Federal Agency that the Review Committee Act on an Agreement Concerning the Disposition of Human Remains and Associated Funerary Objects Determined to Be Culturally Unidentifiable." This form is posted on the National NAGPRA Program website ([www.cr.nps.gov/history/nagpra](http://www.cr.nps.gov/history/nagpra); click on "Review Committee"; then click on "Procedures"; then, under "Request by a Museum/Federal Agency for a CUI Disposition Agreement," click on "form"). Mr. Kippen asked each of the museum or Federal agency requesters appearing before the Review Committee for feedback on the form. The parties responded that the form provided a consistent process, helped define necessary information, and also aided in the consultation process. One recommendation was made that the information for each request be labeled or numbered sequentially in order to aid document reference during discussion.

Mr. Monroe stated that this process was very effective. Mr. Monroe added that to aid the understanding of the public attending the meeting, perhaps a brief summary of each matter could be provided prior to the presentation.

### **Overview of the NAGPRA Grants Retrospective**

#### **Presentation**

Ms. Hutt introduced Ms. Sangita Chari, Grants Coordinator for the National NAGPRA Program, and Ms. Lauren Trice, an intern and recent graduate, University of Mary Washington's Historic Preservation Program.

Ms. Chari summarized her efforts over the past year to improve implementation of the grants program by: assessing the history of the grants program in order to identify its strengths and weaknesses; improving outreach strategies; strengthening grants administration; increasing the amount offered for individual grants; and identifying the capacity of applicants, particularly those Indian tribes and Native Hawaiian organizations who are just beginning to work on NAGPRA implementation. As a result, in FY 2009, grant applications increased 100 percent over the prior year. Ms. Chari stated that the compliance rate for grant awards has improved with the development of a five-year portfolio on each grantee, which enables Ms. Chari to oversee the process and identify potential problems. In addition, extensive information was now available on the National NAGPRA Program website to assist grantees. Ms. Chari stated that she revised the final project form to include quantitative data. The data will help in evaluating the impact of grants, and will be used to help improve outreach and training strategies.

Ms. Chari described a project in which museums were surveyed in order to find out why some museums frequently apply for grants, while others have applied only once, and to understand what factors contribute to successful applications. The answers to these questions depended, to a certain degree, on whether the museum in question is guided by its understanding of the spirit of NAGPRA or restricts its actions to the letter of the law. This difference appears to be largely influenced by museum staff and leadership. Ms. Chari stated that she plans to conduct a similar survey of Indian tribes.

Ms. Chari described efforts to implement a holistic approach to training that encompasses the entire NAGPRA process, from writing and managing successful NAGPRA grants to writing successful notices. Partnerships with organizations such as the National Preservation Institute (NPI) and the National Museum of the American Indian have allowed increased participation through scholarships, have increased outreach, and have added training staff. In addition, technological advances now allow for webinar trainings, thus enabling increased participation. The first National NAGPRA training webinar was scheduled for June 30, 2009.

Ms. Chari stated that the Grants Retrospective Project was an analysis of the 15-year history of the grants program. The project includes statistical information, as well as stories about how NAGPRA had successfully been implemented through the use of grants. Over its 15-year history, the grants program had awarded 592 consultation/documentation grants and repatriation grants totaling over 31 million dollars. Consultation/documentation grants have averaged approximately \$61,000 and repatriation grants have averaged approximately \$9,800.

Ms. Trice stated that grants data was analyzed by year. The number of grant applications was compared to the number of grant awards; the total amount of grant money requested was compared to the total amount awarded; the grant awards were compared by type (consultation/documentation or repatriation); and the grant awards were compared by state. In addition, stories and pictures of successful implementation of NAGPRA through grants were collected. Ms. Chari stated that the information generated in the Grants Retrospective Project will be used to help increase participation and improve the grants process.

#### **Review Committee Questions and Discussion**

Mr. Monroe asked for clarification of the museum survey project and the statement regarding differences between museums claiming to follow the spirit of the law and those who seek to follow the letter of the law, but no more. Ms. Chari stated that approximately 10 to 12 museums were surveyed. Some museums reported that they had completed the required steps in the NAGPRA process, and were waiting for Indian tribes to take the next step. Ms. Chari stated that, oftentimes, this situation was a result of staffing changes and priorities. Ms. Atalay asked for specific details of the survey. Ms. Chari stated that each survey was conducted telephonically by an intern, conversations consisted of a set of open-ended questions, and each survey lasted approximately 90 minutes. Mr. Monroe encouraged Ms. Chari to amplify the survey project, as significant differences exist among museums, and he suggested that a standardized written questionnaire might expedite the process. Ms. Hutt stated that amplification of the project was a good idea, but that the use of a questionnaire would require clearance from the Office of Management and Budget. Ms. Chari stated that, in the meantime, the National NAGPRA Program would continue to do outreach to museums by offering training in conjunction with the annual meeting of the American Association of Museums. Mr. Monroe suggested contacting other organizations, such as the American Association of Museum Directors, the American Association for State and Local History, and the Natural History Museum Association, and offering training in conjunction with their meetings.

Mr. Kippen asked for clarification of the efforts made to increase grant applications, and the adequacy of grant amounts. Ms. Chari stated that, in her opinion, staff interaction with grant applicants and awardees was key to the success of the grants program. This interaction extended to distributing information on the grants program, encouraging Indian tribes and museums to apply for grants, and contacting past grant recipients to ensure compliance with existing grants and encourage new applications. Ms. Chari stated that the maximum consultation/documentation grant had been increased to \$90,000 and the maximum repatriation grant was \$15,000. Ms. Chari stated that, to date, increasing the amount available for consultation/documentation grants had not significantly altered the amounts requested, as many applications requested less than the full available amount. Mr. Kippen asked whether a direct relationship existed between the receipt of a consultation/documentation grant and a request for a repatriation grant. Ms. Chari stated that, while there have been some instances of repatriation grant requests which have followed receipt of a consultation/documentation grant, based on the number of occurrences to date, she could not say categorically that the two are correlated.

Mr. Kippen asked whether an analysis had been done of grant applicants, and whether that information needs to be considered in awarding grants. Mr. Chari stated that the information was available; however, a straightforward consideration of the numbers would not reflect many other factors, such as one Indian tribe applying for one consultation/documentation grant, to be followed by multiple repatriation grants, or one museum applying for multiple grants and working with different Indian tribes. Mr. Kippen stated that he was trying to figure out ways to better use available resources for NAGPRA, referred to by many as an unfunded mandate. Ms. Hutt stated that the total costs of projects described in the FY2009 grant applications totaled over 5 million dollars, of which 4.2 million dollars was requested through NAGPRA grants. These figures would indicate that the applicants assumed that approximately one million dollars of the cost of the projects would be borne by the Indian tribes and museums themselves. The grants program was able to fund just under two million dollars in project costs. Ms. Hutt stated that one of the greatest frustrations voiced by Indian tribes and museums was that the NAGPRA grants program differs from other grants programs in that NAGPRA grants may fund projects but not offices or staff positions, making the implementation of a dedicated NAGPRA program more difficult. Some Indian tribes have been successful in applying for and receiving project grants for consultation/documentation, and then repatriation. By repeating this cycle every year, these tribes have been consistently successful in NAGPRA implementation. The grants panel looks favorably on incremental grants projects, although there are no funding guarantees. Every year, the grants panel ranks all applications on the merits of each individual project. Ms. Hutt stated that Ms. Chari strives to continually improve the process and build capacity in unserved areas. Mr. Kippen stated that, in his opinion, the subcommittee of the Review Committee drafting the 2008 report to Congress should emphasize the disparity between the amount of money requested in grant applications and the amount of funding available for awards.

Mr. Kippen asked about the relationship between the National NAGPRA Program and the National Preservation Institute (NPI), with which the National NAGPRA Program has a cooperative agreement on educational activities. Ms. Hutt stated that NPI was nationally known for delivering training to Indian tribes, museums, and historic preservationists. In addition to organizing and administering training courses, NPI provides access to people and organizations that are not otherwise served by the National NAGPRA Program, and facilitates partnership building. As an example, for the training course on writing and managing a NAGPRA grant, presented in Seattle just prior to the Review Committee meeting, NPI partnered the National NAGPRA Program with the National Museum of the American Indian.

In FY2008, the amount of money available for NAGPRA grants exceeded the amount that the grants panel – a group of Federal employees that does not include any National NAGPRA Program staff – recommended be awarded. Ms. Hutt stated that, at the time, the grants panel encouraged the National NAGPRA Program to use the difference to build capacity for the grants program. Ms. Hutt stated that she heeded the panel's counsel. Consequently, those funds were being used to build capacity in a number of ways. First, the National NAGPRA Program was working with a contractor under the direction of Ms. Mariah Soriano, the National NAGPRA Program's Database and Website Coordinator, to develop essential IT processes which would improve data organization and reporting. Second, the National NAGPRA Program has developed new training courses, is utilizing technology to improve access to training, and is integrating instructors from the Native and museum communities into its sponsored trainings. Third, the National NAGPRA Program is funding scholarships to enable Indian tribes, Native Hawaiian organizations, and small museums to attend training; these funds have been augmented by the National Museum of the American Indian. Fourth, the National NAGPRA Program is producing a multi-segment video which will

encompass all aspects of NAGPRA. Ms. Maggie Spivey and Ms. Lauren Trice, working in the National NAGPRA Program, have visited with Indian tribes and museums and have traveled to Review Committee meetings. Working with local videographers, they are interviewing individuals on various NAGPRA topics. During the Seattle meeting of the Review Committee, Ms. Spivey and Ms. Trice are conducting interviews. Mr. Bob Palmer, civil penalties investigator, worked in partnership with Loras College to develop the video segment on civil penalties, and it will be screened on Saturday, following adjournment of the meeting. Ms. Hutt stated that the excess funds totaled \$205,000 for training, of which \$100,000 was allocated to the video project, \$55,000 for scholarships, and \$50,000 for course development.

### **Nominations for At-Large Member**

Mr. Tarler stated that discussion of the list of persons from which the Secretary of the Interior will appoint the at-large member began at the San Diego, CA Review Committee meeting, in October 2008, at which time Mr. Kippen's name was submitted for consideration by the other Review Committee members. Mr. Monroe stated that he would like to submit the name of Ms. Rosita Worl for consideration. Ms. Atalay stated that she would like to submit the names of Mr. Chip Colwell-Chanthaphonh and Mr. Clayton Dumont for consideration, both of whom were present at this meeting. When asked, Ms. Hutt clarified that the Secretary had made a decision regarding the appointment to the vacant position previously held by Ms. Rosita Worl and that, while the Secretary had not yet signed the appointment letter, the appointee would not be any of the four individuals whose names had been offered for the at-large candidate list.

Mr. Kippen asked for clarification of the process leading to the consented-to list of persons. Ms. Mattix stated that the list was required to be developed and consented to by all of the members of the Review Committee appointed under Sections 8(b)(1)(A) and (B) of NAGPRA and that, as the at-large member appointed under Section 8(b)(1)(C), Mr. Kippen was not eligible to vote on the list. Mr. Kippen asked about the effect of Ms. Augustine's absence on the process. Mr. Tarler stated that the Review Committee members could deliberate on the four names under consideration and, if a list was consented to by the Review Committee members present at the meeting, National NAGPRA Program staff would try to reach Ms. Augustine and seek her consent to the list. Ms. Mattix stated that if Ms. Augustine was unavailable during the meeting, the Review Committee could reconvene later by phone or Ms. Augustine could later consent to the list without a telephone conference. Ms. Hutt stated that, as the process leading to an appointment of a member was a lengthy one, she was concerned that a delay in development of the consented-to list could result in a vacant member position at the next meeting.

Mr. Kippen asked if the Review Committee members had received *curricula vitae* and relevant information for the four names offered for consideration. Ms. Hutt stated that the information had been circulated among the members prior to the meeting. Mr. Kippen stated his concern that the Review Committee members have the necessary resume information and adequate time for review. Mr. Monroe stated that he felt the discussion should include all the current members, and he proposed that a teleconference to finalize the list be scheduled within two weeks following the meeting.

In response to statements by Mr. Kippen that a future meeting be held to include Ms. Augustine, Ms. Hutt stated that Ms. Augustine had not submitted her Confidential Financial Disclosure Report and that until she did so she would be ineligible to participate. Ms. Hutt restated that the Review Committee members had circulated information on the names under consideration prior to the meeting, and she asked the Review Committee to consider allowing the four members present and eligible to develop the list to do so at this meeting. In response to statements by Mr. Kippen that the National NAGPRA Program must act in an open and transparent manner, Ms. Hutt stated that she wanted to make clear that the National NAGPRA Program would never act in a recalcitrant manner concerning the submission to the Secretary of the list of persons for at-large member. Ms. Hutt stated that if the Review Committee were to decide to allow Ms. Augustine's concurrent participation, then the National NAGPRA Program would schedule a teleconference with all the eligible participants.

Mr. Kippen stated that, in his opinion, the notice given to the Review Committee members, on May 13, 2009, that their Confidential Financial Disclosure Reports were due on or before May 23, was very short and that, consequently, he was concerned that Ms. Augustine would be removed from the Review Committee for not having completed her report. Ms. Hutt stated that she was not suggesting that Ms. Augustine be removed from the Review Committee, but only that the Review Committee attend to this agenda item with the members who were eligible to

participate. Further, in conversations with Ms. Hutt prior to this meeting, Ms. Augustine had been indecisive about whether she intended to complete and submit the Confidential Financial Disclosure Report. Mr. Monroe stated that, in his opinion, Ms. Augustine needed to be given a reasonable opportunity to complete her report and participate in the development of the consented-to list. Mr. Monroe recommended that the National NAGPRA Program schedule a teleconference within two weeks following this meeting, which would allow Ms. Augustine a reasonable opportunity to submit the required paperwork. Mr. Kippen asked about the ramification of Ms. Augustine's choosing not to submit the report. Mr. Simpson stated that the Review Committee charter requires the members to comply with applicable ethics rules and regulations, and he would need to consult with the Department ethics office to determine any possible ramifications for such a decision. Mr. Monroe stated that, while each member is nominated by different groups, the Review Committee members have a shared group responsibility for implementation of the law, and do not individually represent one interest or another. This group responsibility was the reason the Review Committee members strive to act as a complete group.

Mr. Kippen asked the National NAGPRA Program to exercise due diligence in attempting to contact Ms. Augustine and obtain her report, and to schedule a teleconference to finalize the list of persons for at-large member within ten days of this meeting. After seeking clarification from Mr. Simpson, Mr. Kippen stated that the telephonic meeting would be considered an administrative meeting under the Federal Advisory Committee Act to address only the matter of the list and that, per the advice of counsel, the meeting would therefore not need to be publically noticed. Mr. Kippen stated that he would attend and open the meeting, personally ensure that the process was conducted in an appropriate fashion, and then turn the meeting over to Mr. Monroe as Vice Chair. Mr. Kippen stated that he was concerned about possible sanctions and removal of Review Committee members. Mr. Monroe stated that, in his opinion, the record needed to reflect that no one had suggested sanctioning or removing a member. Rather, the discussion involved a Federal requirement that had not been fulfilled on the part of one member and which would have prevented Ms. Augustine's participation even if she was present at this meeting. By giving Ms. Augustine additional time to complete and submit her Confidential Financial Disclosure Report, the Review Committee was trying to assure Ms. Augustine a reasonable opportunity to participate in developing the consented-to list of persons from which the Secretary will appoint the at-large member. Mr. Kippen stated that he has had experience with sanctions and removal, and that he very much appreciated Ms. Hutt's efforts to discuss this matter in an open and transparent manner.

### **Selection of Vice Chair**

Ms. Hutt stated that Mr. Kippen's term would expire on August 8, 2009. As the Review Committee's charter no longer contains a holdover provision, Ms. Hutt asked the Review Committee to consider selecting a Vice Chair to serve in the event of a lapse in Mr. Kippen's membership on the Review Committee.

### **Review Committee Motion**

Mr. Goodman made a motion to elect Mr. Monroe as Vice Chair in the event of a lapse in Mr. Kippen's membership on the Review Committee. Mr. Hemenway seconded the motion. Mr. Kippen called the question. The motion passed unanimously.

### **Discussion of the Review Committee Charter**

Mr. Monroe stated that the Review Committee's charter was changed by the Department of the Interior in 2008, following the San Diego, CA meeting, and without prior knowledge of the Review Committee members. Both the holdover provision and the quorum requirement were removed from the charter. Before her term expired in March 2009, Chair Rosita Worl selected Mr. Monroe to serve as Chair pro tem until the Seattle, WA meeting. Ms. Mattix confirmed with Mr. Monroe that, prior to the expiration of her term, Ms. Worl signed all documents required to be signed by the Chair. Ms. Hutt stated that the National NAGPRA Program had no knowledge of, and did not request, the changes that had been made to the charter. Ms. Hutt stated that a request already had been made within the Department to revise the charter and reinsert the holdover provision. The Review Committee discussed the possible ramifications of the removal of the quorum requirement, and stressed the importance of a fully constituted and balanced Review Committee.

### **Review Committee Motion**

Mr. Monroe made a motion that the Review Committee strongly encourages the Secretary to change the following provisions of the charter: first, reinstate the holdover provision; second, reinstate the quorum provision to require a minimum representation of five members. Mr. Goodman seconded the motion. Mr. Kippen called the question. The motion passed unanimously.

### **Comments from the Review Committee for the Drafters of a Proposed Rule Regarding the Rule to be Codified at 43 CFR 10.7**

Section 3(a) of NAGPRA deals with the ownership or control of Native American cultural items excavated or discovered on Federal or tribal lands after November 16, 1990. Section 3(b) (25 U.S.C. 3002(b)) deals with cultural items that are not claimed under section 3(a). The section reserved in the regulations – to be codified at 43 CFR 10.7 – that will address the disposition of unclaimed human remains, funerary objects, sacred objects, or objects of cultural patrimony has not yet been promulgated.

Since 2005, the National NAGPRA Program has conducted several public consultation sessions on 43 CFR 10.7. Prior to the Seattle, WA meeting, the Review Committee received a CD containing an executive summary of all these consultations, as well as complete electronic copies of all relevant documents produced to date. To advance the process, the National NAGPRA Program has engaged the services of Ms. Patricia Zell, an attorney who helped write NAGPRA and who has extensive rulemaking experience. In addition, a Federal agency work group has been assembled to provide input on these regulations, as the rule will essentially incorporate best practices for Federal agencies in the disposition of Native American human remains and cultural items discovered on Federal and Indian lands. The Federal agency work group produced a report to assist the Review Committee in formulating their comments, and it is in the Committee's binders. Ms. Hutt stated that the National NAGPRA Program would appreciate any comments or guidance the Review Committee would like to provide, and that the Review Committee's comments would be considered during the drafting of the proposed rule. The proposed rule, in turn, would be published for public comment.

Mr. Kippen stated that the Federal work group report captured a lot of the issues to be addressed by this particular rule, and asked the other members for thoughts on how to proceed with the discussion. Mr. Monroe stated the report was extremely helpful in outlining a number of issues that were fairly complicated. Mr. Kippen asked if the report that the Review Committee had received was available to the public. Mr. Simpson stated that, under the rulemaking process, predecisional documents are not available to the public. Mr. Simpson stated that if Review Committee members had any legal questions when preparing comments for the drafters of the proposed rule, they could bring them to the attention of counsel, who would be happy to assist. Mr. Kippen stated that, in his opinion, there were considerable issues to address, and that the Review Committee was not ready to move forward at the present time. Mr. Kippen asked that each Review Committee member review the issues raised in the Federal work group report, and submit individual comments to the Chair. The Chair would then work with the National NAGPRA Program to organize the comments and hold a structured discussion at the next Review Committee meeting.

### **National NAGPRA Program Manager's Mid-Year Report on the Implementation of NAGPRA (FY2009)**

#### **Presentation**

Ms. Sherry Hutt stated that the draft National NAGPRA Program Manager's mid-year report on the implementation of NAGPRA (FY2009) was in the Review Committee's binders. Following the meeting, the comments of the Review Committee would be taken into consideration before the report was posted on the National NAGPRA Program website.

Ms. Hutt stated that she would like to begin by giving an update on NAGPRA from a national perspective, based on information gathered through interactions with Indian tribes, Native Hawaiian organizations, museums, Federal agencies, and other interested members of the public. The first issue raised by many commenters was whether all



human remains in museums and Federal agencies had been included in inventories, or whether some had been excluded due to questions involving matters such as “control.” In response, the National NAGPRA Program does not have the authority to audit collections. A second issue was whether all human remains in culturally affiliated inventories are also in notices. In response, NAGPRA requires that within six months of completion of an inventory, all culturally affiliated human remains must be listed in a notice. Ms. Katherine Maas, a National NAGPRA Program intern, completed a study in which culturally affiliated human remains listed in Federal agency inventories were compared with those listed in published notices. The study report, available on the National NAGPRA website, found that discrepancies exist between the two lists. As a result, the National NAGPRA Program is working with Federal agencies to address this issue, and is undertaking to upload into electronic files all the relevant data contained in the paper files in order to ensure that information for future reports is contained in a fully populated database. A third issue was whether there are Native American human remains and associated funerary objects presently listed as culturally unidentifiable that are capable of being determined culturally affiliated through the application of better techniques in consultation and a “reasonable basis” standard in decision making. In response, Mr. Andrew Kline, a National NAGPRA Program intern, addressed that issue in his study, titled “Who Are the CUI?”, which he presented to the Review Committee in April 2007, at the Washington, DC meeting. Mr. Kline found that in his study group, approximately 80 percent of those human remains listed in the CUI database could be identified as to geographic location and time depth, or they had been found together with objects of material culture. The human remains belonging to these groups could reasonably be culturally affiliated. One of the goals of the National NAGPRA Program is to reduce the number of individuals in the CUI database through training, outreach, and technical assistance.

Ms. Hutt described other concerns heard repeatedly by the National NAGPRA Program. They include the purported absence of funerary objects associated with ancestors’ remains, the lack of funding to adequately staff NAGPRA program offices within Indian tribes and museums, and the constant need for more training. Ms. Hutt stated that efforts to improve NAGPRA training were described at the meeting, but that additional ideas would be welcome. The decision of the United States Court of Appeals for the Ninth Circuit in *Bonnichsen v. U.S.*, also referred to as the Kennewick Man case, likely has caused some human remains that otherwise would be determined Native American and culturally unidentifiable to be determined not Native American and, thus, to not be included in an inventory. Ms. Hutt stated that, while the National NAGPRA Program has no way to determine how many human remains were omitted from inventories by museums or Federal agencies as a result of *Bonnichsen*, she wanted to bring the issue to the attention of the Review Committee. One final issue from a national perspective was the status of the final rule dealing with culturally unidentifiable human remains, to be codified at 43 CFR 10.11. Ms. Hutt stated that the change in administration partially has delayed publication of the rule, but that the National NAGPRA Program takes the matter of publication very seriously and will provide updates to the Review Committee when they are available.

Ms. Hutt summarized the work of the National NAGPRA Program for the first half of FY2009. To date in FY2009, Ms. Jaime Lavalley, Federal Register notice coordinator, had published a total of 140 notices, compared to a total of 180 for the entire 2008 fiscal year. This rate of publication reflects Ms. Lavalley’s dedication and also the hard work of museums and Federal agencies across the country in preparing notices and approving them for publication, and it serves as a barometer for the level of NAGPRA activity across the nation. The mid-year report also contained summary information on notice publication by year and by notice type. Ms. Mariah Soriano, Database and Website Coordinator, was working with a contractor to build IT capacity and improve reporting capability. Any ideas from the Review Committee on desired information or reports would be appreciated. Ms. Hutt stated that the Review Committee heard reports on both the grants program and training earlier in the meeting, and would receive an update on civil penalties from Mr. Bob Palmer, following her presentation. Ms. Hutt stated that the final issue she wanted to discuss was the process for the Secretary’s appointment of a member to the current vacant position on the Review Committee. Although the delays were frustrating, Department of the Interior staff were wonderful to work with, and they expressed a strong desire to meet the members in person should the Review Committee meet in Washington, DC in the future, perhaps in FY2010.

#### **Review Committee Questions and Discussion**

Mr. Monroe asked for further clarification of the findings of Mr. Kline’s report on the CUI database. Ms. Hutt stated that Mr. Kline studied the CUI inventories from nine states in which over 50 percent of the total number of human remains in that state were purported to be culturally unidentifiable. Mr. Kline queried the information in the inventories in a number of ways. Mr. Kline found that approximately 80 percent of the human remains fell under one of two categories – either they were from the Historic period, and had been excavated by archeologists from the

late 1960s to the present, or they had been found in a context with 50 to 2,000 objects of material culture. Moreover, many of the human remains were located in museums near their site of origin. Mr. Kline's findings raised the question of whether consultation had actually occurred and/or the correct standard for deciding cultural affiliation had been applied.

Mr. Monroe stated that, in his opinion, Mr. Kline's study exposed a fundamental material failure in the implementation of NAGPRA. Mr. Monroe stated that the Review Committee needed to discuss possible forms of remediation to address the issue of whether the purported CUI were in fact culturally unidentifiable. Ms. Atalay stated that she had heard, anecdotally, that the classification of Native American human remains as culturally unidentifiable was used by some institutions as a loophole to get around the NAGPRA process. Ms. Atalay stated that she was not saying that all museums were following this pattern. Mr. Monroe stated that, in his opinion, the majority of museums have taken their NAGPRA responsibility very seriously, and that at issue was how to uphold the standards for decision making that most institutions believe in and apply, while addressing the shortcomings of institutions not operating to those standards. Ms. Hutt asked if the Review Committee would like a more detailed study. Mr. Goodman stated that he would favor such a study, and that perhaps additional questions could be answered by examining institutions individually. Ms. Atalay stated that she had started a project to compare determinations of cultural affiliation and CUI by individual institution, and that she would be happy to share the information with the National NAGPRA Program. Mr. Kippen stated that, in addition to a more detailed study, the Review Committee might schedule a discussion on whether the purported CUI in fact were culturally unidentifiable for an upcoming meeting, and perhaps invite some institutions to address the issue. Mr. Monroe stated that he would be interested, initially, in looking at sizeable institutions that have classified 80 percent or more of their collection as culturally unidentifiable. Ms. Atalay asked if consultation details were included on the database. Ms. Hutt stated that information on consultation with Indian tribes would be in notices and not in the database.

Mr. Hemenway suggested that NAGPRA trainings could include individuals from Indian tribes and museums with actual consultation and repatriation experience, as they would be a good source of information and examples. Ms. Atalay asked for clarification of a point raised at the training session about parties being able to bring questions before the Review Committee outside of an actual dispute. Ms. Hutt stated that under Section 8(c)(3) of NAGPRA, a party can present an issue to the Review Committee for findings of fact in order to move the NAGPRA process forward. Mr. Kippen asked if the Review Committee's 2007 report to Congress had been forwarded to Capitol Hill. Ms. Hutt confirmed that the report had been sent. In fact, the National NAGPRA Program received a request from staff to Senators Inouye and Akaka for a briefing on NAGPRA, which Ms. Hutt and Mr. Tarler happily provided in person.

#### **Introduction of Ms. Jeanette Soares, Attorney, Government Accountability Office**

Mr. Kippen stated his belief that a Government Accountability Office (GAO) study on Federal agency compliance with NAGPRA had been commissioned. Ms. Jeanette Soares, staff attorney for the GAO, confirmed that the GAO had received a request from the Senate Indian Affairs Committee to review NAGPRA implementation, and that she had been staffed to that review. The review would begin when decisions on staffing were completed, within the next couple of months. Mr. Kippen asked Ms. Soares to relay the Review Committee's concern with this matter, and added that the Review Committee looked forward to receiving the GAO's findings and recommendations.

### **National NAGPRA Program Law Enforcement Investigator's Report on NAGPRA Civil Enforcement**

#### **Presentation**

Mr. Bob Palmer, Civil Penalty Investigator, welcomed the newest members of the Review Committee. Mr. Palmer stated that, as the civil penalties investigator, he was not employed by the National NAGPRA Program, nor was any of his salary paid out of National NAGPRA Program funding. The portion of his duties dedicated to NAGPRA civil penalty investigations came from the operations budget of the Law Enforcement, Security and Emergency Services division of the NPS, through a partnership between the National NAGPRA Program, the NPS Law Enforcement, Security, and Emergency Services office, and his primary employer, Effigy Mounds National Monument. Mr. Palmer expressed his appreciation to those three parties for allowing him to carry out this important work.

43 C.F.R. 10.12 was published as an interim rule in 1994 and as a final rule in 2003. In May 2005, through a Secretarial Order, the National NAGPRA Program was given the responsibility of providing staff support to the Secretary's designee on civil penalties, who is the Assistant Secretary for Fish and Wildlife and Parks. Since the beginning of 2006, Mr. Palmer has been assigned for eight hours per week to investigate allegations of museum failure to comply with the requirements of NAGPRA.

NAGPRA regulations set forth eight ways that a museum might fail to comply with the Act or its regulations.

1. Sale or transfer of NAGPRA items contrary to NAGPRA:
2. Failure to complete a summary.
3. Failure to complete an inventory.
4. Failure to notify tribes within 6 months after completion of the inventory.
5. Refusal to repatriate.
6. Repatriation prior to publishing a notice in the Federal Register.
7. Failure to consult with tribes and/or lineal descendants.
8. Failure to inform recipients that items have been treated with pesticides.

Mr. Palmer stated that he was presently investigating a number of allegations that involve multiple institutions from around the country, and anticipated that by the end of FY2009, findings on approximately 20 individual counts would be submitted to the Assistant Secretary for action. Mr. Palmer stated that he would provide a full summary of FY 2009 civil penalty investigations at the next meeting. Mr. Palmer stated that one museum had recently paid the penalty assessed against it, and he was notified by the attorney for a second museum that the museum intended to pay its penalty shortly.

Mr. Palmer stated that at the San Diego, CA meeting, the Review Committee had asked him to investigate the possibility and feasibility of establishing a Memorandum of Agreement between the Department of the Interior (DOI) and the Federal Bureau of Investigation (FBI) to permit DOI law enforcement officers to investigate potential criminal violations of NAGPRA and the Archaeological Resources Protection Act (ARPA) that occur outside of DOI and Indian lands. Mr. Palmer reported that he had discussions with the FBI's Indian Country unit and learned that the FBI might be interested in such an agreement. Mr. Palmer drafted an agreement, which was currently under review by legal counsel.

Mr. Palmer stated that he hoped the NAGPRA civil penalty video would serve as a timely piece of advocacy for NAGPRA compliance, by highlighting instructive moments in such a way as to provide Indian tribes and museums with useful information. The civil penalty section of the NAGPRA video series was completed at a substantially reduced cost as a result of a partnership with Loras College, in Dubuque, IA, and using volunteer actors. Mr. Palmer expressed his appreciation to Mr. Craig Schaefer, Mr. Ted Rosean, and Mr. Chris Lenart from Loras College Productions, the Behavioral Sciences Division at Loras College, and the volunteer staff at the Froelich Foundation in Froelich, IA. Mr. Palmer stated that the civil penalties video would be shown following the meeting that day.

#### **Review Committee Questions and Discussion**

Mr. Kippen asked for additional information on the potential agreement with the FBI. Mr. Palmer stated that it was patterned after a similar agreement between the FBI and DOI's Indian Arts and Crafts Board. Mr. Palmer stated that, since the San Diego, CA meeting, criminal investigation of NAGPRA in the FBI was moved from the Art Crime team to the Indian Country unit.

#### **Park NAGPRA Program Presentation**

Ms. Cyd Martin, Program Manager for the Park NAGPRA Program and Director for Indian Affairs, Intermountain Region, NPS, thanked the Review Committee members for their hard work, time, and attention. Ms. Martin stated that she would like to note for the record that NAGPRA implementation varies among Federal agencies, and that the NPS and many of its sister agencies work very hard at NAGPRA compliance.

Ms. Mary Carroll, Program Lead for the Park NAGPRA Program, gave a brief overview of the Park NAGPRA Program. The NPS both complies with and administers NAGPRA. This dual role, which was initially performed by a single NPS office, created confusion. The two functions were separated within the NPS, with the establishment of

the National NAGPRA Program, in Washington, DC, and the Park NAGPRA Program, in Denver, CO. The National NAGPRA Program administers NAGPRA externally, by developing regulations and guidance, providing staff support to the Review Committee, managing the grants program, and assisting Indian tribes, Native Hawaiian organizations, museums, and Federal agencies with the NAGPRA process. The Park NAGPRA Program, on the other hand, oversees NPS's own compliance with NAGPRA, by assisting all National Park system sites with compliance activities, and providing them with technical advice, guidance, training and funding. The Park NAGPRA Program has a staff of three – Ms. Martin, Ms. Carroll, and a part-time intern. Each of the seven NPS regions has at least one person designated to serve as a regional NAGPRA coordinator.

Ms. Carroll stated that the NPS was committed to proactively addressing the contaminated collections issue in National Parks, and expressed this commitment in a Director's Memo, which was included in the Review Committee's binders. In the memo, the Director asked regional directors and superintendents to go beyond NAGPRA's requirements to inform Indian tribes of known treatments by taking two steps. First, in all government-to-government NAGPRA consultations, NPS officials will inform Indian tribes about the contaminated collections issue, and whether or not an object's treatment history is known. Second, NPS officials must inform Indian tribes that the NPS has the capacity to test for certain contaminants. If an Indian tribe would like an item tested, the NPS will arrange for testing by the Intermountain Region Museum Services Program's conservation staff. The NPS developed a guidance document to help NPS staff discuss the contamination issue and a guidance document to help NPS parks with the testing process, copies of which were in the Review Committee's binders. These documents are also available on the NPS intranet site. Ms. Martin expressed appreciation for the NPS leadership's attention to this issue, which had resulted in the development of these guidance documents.

#### **Review Committee Discussion and Questions**

Mr. Goodman asked for clarification of the types of contaminants that could be detected through testing by the NPS. Ms. Carroll stated that the Intermountain Region Museum Service Program, in conjunction with the Park NAGPRA Program, purchased an XRF machine, which can test for arsenic, mercury, and lead. Ms. Martin stated that the Park NAGPRA Program did not currently have the capability to test for other contaminants, but was aware of their dangers. Mr. Hemenway thanked the Park NAGPRA Program for their efforts to address the contamination issue and for making contamination testing available, which was a real benefit to Indian tribes due to the large expense involved with testing. Ms. Martin stated that, where possible, requests for testing had been honored even when the items had not been under the control of the NPS. Mr. Kippen stated that the guidance developed by the NPS was extremely valuable.

#### **Dates and Location of the Spring 2010 Review Committee Meeting**

After discussion, the Review Committee agreed to hold the spring 2010 meeting in Washington, DC, and the fall 2010 meeting in Syracuse, NY. The Review Committee expressed their desire to hold the meeting at least partially during the workweek and to avoid holidays, so as to allow for greater participation by the public.

#### **Public Comment – Ms. Denise Bambi Kraus**

Ms. Denise Bambi Kraus, President of the National Association of Tribal Historic Preservation Officers (NATHPO), expressed greetings from the Board of NATHPO, and stated she was a member of the Tlingit Tribe and an elected tribal official from Kake, AK. For the benefit of the new members, Ms. Kraus summarized the report on Federal agency compliance completed by NATHPO and the Makah Tribe. The project was funded by a NAGPRA grant, and a full summary of the report was presented to the Review Committee at the De Pere, WI meeting, in May 2008. Ms. Kraus stated that the report was available on the NATHPO website.

Ms. Kraus stated that the report was having an effect. She has been contacted by Federal agency officials offering feedback on their NAGPRA compliance. The report was an important tool, highlighting areas of NAGPRA implementation that need attention, such as the culturally unidentifiable human remains database, additional funding for the NAGPRA grants program, additional training, and the lack of NAGPRA guidance documents in many Federal agencies. The report contained a number of recommendations, including the creation of an interagency

council to oversee compliance and training, creation of a database of NAGPRA contacts at each Federal agency for posting on the National NAGPRA Program website, improvement of the technology and search capabilities of the culturally unidentifiable human remains database, the posting of a list of Federal Register notices pending publication on the National NAGPRA Program website, additional NAGPRA funding, and a GAO audit of operations. Ms. Kraus stated that she was encouraged to hear about the forthcoming GAO study on Federal agency compliance with NAGPRA.

Mr. Kippen asked how the NATHPO/Makah report could help with NAGPRA implementation. Ms. Kraus stated that the report was the first study on a national level of how Federal agencies implement the Act, and it revealed very little compliance at some agencies, along with the lack of incentives for Federal agencies to comply. Information about where the law works and does not work will strengthen NAGPRA implementation. Mr. Kippen stated that, from the report, there appear to be disparities in NAGPRA implementation between different Federal agencies. Also, the report highlighted the need for capacity building among Federal agencies. Mr. Kippen asked about NATHPO's training capacity. Ms. Kraus stated that one of NATHPO's missions was training, and asked that NATHPO be added to the list of vendors for the National NAGPRA Program.

Ms. Kraus stated that NATHPO recently completed a cooperative agreement for training with the National NAGPRA Program, for which NATHPO was paid \$4,316.56. Ms. Kraus wanted the record to reflect that the money was not taken from the NAGPRA grants program. Ms. Hutt confirmed that the funds came from law enforcement funds for training. Ms. Hutt stated that she was happy to provide any information on cooperative agreements to the Review Committee upon their request. Ms. Kraus stated that there was a need to urgently finalize the reserved sections of the regulations. Ms. Kraus also asked if Indian preference applied to positions within the National NAGPRA Program. In reply, Mr. Simpson stated that Indian preference applied to positions within the Bureau of Indian Affairs, but did not apply to the National Park Service, including the National NAGPRA Program. Ms. Kraus stated that the eleventh annual NATHPO meeting would be held in Durant, OK, in August 2009, and thanked Ms. Hutt and Mr. Tarler for their assistance in NATHPO's state law project, which was available on the NATHPO website. Ms. Hutt stated that the National NAGPRA Program has worked very diligently to ensure a robust applicant pool for any staff position openings, and encourages applications from Indian Country. Ms. Hutt further stated that a position opening would be posted in the near future.

### **Public Comment – Mr. Anthony Garcia**

Mr. Anthony Garcia, Repatriation Coordinator for the Phoebe Hearst Museum of Anthropology, University of California – Berkeley, gave an update on NAGPRA implementation at the Phoebe Hearst Museum. The Phoebe Hearst Museum has worked to improve tribal relations and consultation. The Phoebe Hearst Museum had completed one repatriation, and has one pending Notice of Intent to Repatriate, seven active claims, and seven claim requests in the beginning stages. Staff has been working on two Notices of Inventory Completion, and is undertaking a review of culturally unidentifiable human remains in an effort to culturally affiliate them. The University of California – Berkeley has established a NAGPRA committee, comprised of three members from the anthropological community and three campus-wide members, two of whom are Native American.

Ms. Atalay asked for additional information on the University of California – Berkeley NAGPRA committee members. Mr. Garcia stated that the team from the anthropology community includes Dr. Tim White, Dr. Kent Lightfoot, and Dr. Ira Jacknis, all three of whom are either curators or staff related to the museum. The other three members are Professor Phil Frickey from the Boalt Law School, who chairs the committee; Karen Biestman, a professor of American Studies and a Native American; and Joseph Myers, a lawyer and professor of Native American studies and a Native American. Mr. Hemenway asked about the consultation policies of the museum. Mr. Garcia stated that the museum tries to follow the Indian tribes' wishes for consultation, including traveling to Indian tribes when possible, inviting Indian tribes for on-campus visits, consulting by phone or email, and studying past correspondence to try to identify and engage interested Indian tribes. Ms. Atalay stated that the University of California – Berkeley has a large collection with a high percentage of human remains that have been determined to be culturally unidentifiable. Mr. Garcia stated that the museum currently was reviewing those records in hopes of culturally affiliating the human remains. Mr. Garcia stated that he would update the Review Committee on their progress at future meetings. Mr. Garcia stated that the museum's effort was in response to specific requests and in recognition of the need to review past classifications which may have been made in error. Following the evaluation

project, Mr. Garcia stated that the museum would work with local groups on the disposition process for those individuals that remain culturally unidentifiable.

### **Public Comment – Mr. Frank Wozniak**

Mr. Frank Wozniak stated he has been the National NAGPRA Coordinator for the USDA Forest Service since 2001, and the NAGPRA Coordinator for the Southwestern Region of the USDA Forest Service since 1992. Mr. Wozniak stated that the 2008 farm bill contained a provision which gave formal Congressional authorization to the Forest Service to reburial Native American human remains and funerary objects on Forest Service lands if the human remains and funerary objects originated from sites on or adjacent to Forest Service lands, and if requested to do so by the culturally affiliated Indian tribal owner. Informally, the Forest Service has allowed reburials on Forest Service lands since 1991. By the end of FY2009, the Forest Service will have repatriated 301 sets of Native American human remains, 1,826 associated funerary objects, and 80 unassociated funerary objects, through three separate repatriations, to the Pueblo of Jemez, the Pueblo of Zuni, and the Tohono O'odham Nation. Mr. Wozniak related that, one day, he discovered that the Forest Service entries on the database of culturally unidentifiable human remains had doubled in number. When contacted by Mr. Wozniak, the National NAGPRA Program said they were aware of the problem, and were working to correct the error. The Forest Service wanted to bring this matter to the attention of the Review Committee, and stressed that the Forest Service is dedicated to ensuring that their information is accurate.

Mr. Kippen thanked Mr. Wozniak for calling the matter involving the CUI database to the attention of the Review Committee. As the Manager of the National NAGPRA Program was not present to respond, Mr. Kippen requested that, at the next Review Committee meeting, the National NAGPRA Program explain why the entries in the CUI database had been doubled.

### **Public Comment – Mr. Art Hutchinson/Mr. Fred Bunch**

Mr. Art Hutchinson, Superintendent of Great Sand Dunes National Park, stated that NAGPRA has many positive and extremely rewarding outcomes. Great Sand Dunes National Park partnered with sister Federal agencies to more effectively consult with Indian tribes. As a result of these efforts, 12 active Indian tribes have either signed, or are in the process of signing, an MOU with 4 or 5 Federal agencies to deal with future inadvertent discoveries. This proactive effort has resulted in more comprehensive consultation, increased information exchange, and decreased expenses for all involved. Mr. Hutchinson stated that, in his opinion, this arrangement would also work in other parts of the country. Mr. Fred Bunch, Chief of Resource Management at Great Sand Dunes National Park, stated that the MOU was intended to be a living document, with opportunities for new Indian tribes to participate should they desire. The Review Committee members expressed appreciation for this work and for the level of commitment by all the parties involved.

### **Public Comment – Ms. Norma Jean Robin Wilson**

Ms. Norma Jean Robin Wilson stated that she attended the grants writing training presented in Seattle, just prior to the Review Committee meeting, and thanked the National NAGPRA Program for their outreach and training. As the venues planned for the next three meetings were on the East Coast, Ms. Wilson asked about the possibility of holding them as webcasts, so as to enable broader participation. Ms. Wilson stressed the importance of access to information and transparency of process, particularly where discussions involving institutions with large numbers of culturally unidentifiable human remains were concerned.

Mr. Kippen stated that Ms. Wilson raised important points for consideration, and asked the National NAGPRA Program to research the possibility of webcasts for upcoming meetings. Mr. Tarler stated that the National NAGPRA Program had researched the possibility of making this meeting available telephonically, and found that the costs were prohibitive, but that the National NAGPRA Program would continue to research alternative technologies that could improve meeting access.

### **Comment – Mr. Colin Kippen**

Mr. Kippen stated for the record that the issue of reinstating a quorum requirement was vital to preserving the function of the Review Committee. In addition, he noted that Review Committee members have experienced difficulty with travel arrangements and the reimbursement of expenses. Mr. Kippen acknowledged that the National NAGPRA Program was working to address those concerns, so as to ensure that the Review Committee functioned at the highest possible level.

### **Closing Comments**

Mr. Monroe thanked the National NAGPRA Program staff and those involved with the trainings for their efforts, and thanked all the attendees for their participation. Mr. Monroe stated that he would like to honor and respect the intent and spirit of NAGPRA, which addresses basic civil rights, religious rights, and culture and society at large. Mr. Hemenway thanked the Review Committee members, National NAGPRA staff and public who attended the meeting. Mr. Kippen thanked the Review Committee members, National NAGPRA staff and counsel. Mr. Kippen stated that this meeting might possibly be his last as a Review Committee member, that during his time on the Review Committee he had experienced some amazing moments, and that he was happy to have been able to serve on the Review Committee.

### **Closing**

Mr. Hemenway offered a closing blessing at the end of each meeting day.

### **Meeting Adjournment**

The meeting was adjourned at 11:15 a.m., Sunday, May 24, 2009.

Certified –

Signed  
\_\_\_\_\_  
Mr. David Tarler,  
Program Officer, National NAGPRA Program  
Designated Federal Officer, Native American Graves Protection  
and Repatriation Review Committee

August 21, 2009  
\_\_\_\_\_  
Date

Approved on behalf of the Review Committee –

Signed  
\_\_\_\_\_  
Mr. Dan Monroe  
Vice Chair, Native American Graves Protection  
and Repatriation Review Committee

August 24, 2009  
\_\_\_\_\_  
Date